

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	WT Docket No. 03-187
Effects of Communications Towers on	)	
Migratory Birds	)	
	)	
	)	

**COMMENTS OF THE NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS  
COUNCIL**

The National Public Safety Telecommunications Council (NPSTC) submits these comments in response to the Commission’s Notice of Proposed Rulemaking (NPRM) addressing changes in its rules with regard to how communications towers are constructed and maintained. These changes seek to protect migratory birds.<sup>1</sup> Public safety agencies own and maintain tower infrastructure and collocate facilities with towers owned by commercial interests. NPSTC urges the Commission to develop a record and consider and balance carefully the costs and logistics that any rule changes will have on licensees, particularly public safety agencies.

**The National Public Safety Telecommunications Council**

NPSTC serves both as a resource and advocate for public safety organizations in the United States on matters relating to public safety telecommunications. NPSTC is a federation of public safety organizations dedicated to encouraging and facilitating, through its collective voice, the implementation of the Public Safety Wireless Advisory Committee (PSWAC) and the 700 MHz Public Safety National Coordination Committee (NCC) recommendations. NPSTC

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<sup>1</sup> In the Matter of Communications Towers on Migratory Birds, Notice of Proposed Rulemaking, WT Docket No. 03-187, FCC 06-164 (November 7, 2006)

explores technologies and public policy involving public safety agencies, analyzes the ramifications of particular issues, and submits comments to governmental bodies with the objective of furthering public safety communications worldwide. NPSTC serves as a standing forum for the exchange of ideas and information for effective public safety telecommunications.

The following 14 organizations participate in NPSTC:

American Association of State Highway and Transportation Officials

American Radio Relay League

American Red Cross

Association of Fish and Wildlife Agencies

Association of Public-Safety Communications Officials-International

Forestry Conservation Communications Association

International Association of Chiefs of Police

International Association of Emergency Managers

International Association of Fire Chiefs

International Municipal Signal Association

National Association of State Chief Information Officers

National Association of State Emergency Medical Services Officials

National Association of State Foresters

National Association of State Telecommunications Directors

Several federal agencies are liaison members of NPSTC. These include the Department of Agriculture, Department of Homeland Security (SAFECOM Program and the Federal Emergency Management Agency), Department of Commerce (National Telecommunications

and Information Administration), Department of the Interior, and the Department of Justice (National Institute of Justice, CommTech Program).

## **Overview**

The NPRM addresses communications towers in excess of 200 feet and concludes that such infrastructure should project medium intensity white strobe lights for nighttime conspicuity as the preferred means over the current red obstruction lighting systems. It seeks comment on whether scientific evidence supports this requirement and how it should be implemented. It asks for analysis of the legal foundation for this rule. Other measures that might serve to mitigate the impact of communications towers on migratory birds are also addressed. The Commission inquires whether guy wires as tower infrastructure should be prohibited. The Commission asks whether it should restrict tower height and whether there should be an obligation to collate with other users. That each application to construct a tower should routinely be subject to an environmental review and a finding of no impact is also suggested. The NPRM also asks whether existing towers should be altered to comply with any new rules.

## **The Proposed Changes Will Have Significant Effect on Public Safety Licensees**

The factual and legal issues at stake in whether the Commission should promulgate regulations to protect migratory birds are many and complex. The vigorous debate reflected in the record so far provides no clarity. From NPSTC's perspective, the widely divergent positions mask an underlying need to ascertain the financial and logistic effects of mounting white strobe lights, prohibiting guy wire infrastructure and reducing tower heights. All have the potential to impose significant resource demands on licensees and, with regard to lowering tower heights, an alternative that is not reasonable as it will impede public safety communications.

NPSTC takes no position on the legal and factual issues surrounding migratory birds and

communications towers. We do address the effect the proposals have on public safety agencies. NPSTC thinks it important that the Commission's rules comprehend that towers are constructed within local and state regulatory regimes that encompass extensive community involvement. NPSTC urges the Commission to recognize and incorporate not only the public safety, communications, aviation and environmental issues at stake but an awareness of local and state interests. Rules that contradict local interests or bring uncertainty to that process mean not only delay and cost, but in many circumstances will erect a barrier to effective public safety communications.

In particular, the Commission asks for comment on a rule that would restrict the height of a communications tower to 200 feet, which is essentially the universe of towers now requiring registration with and approval by the Federal Aviation Agency (FAA) and the Commission. NPSTC does not think such a proposal is reasonable. Any restriction must comprehend that lowering the height of a tower reduces a signal's reach. It means that an emergency dispatch cannot reach the incident location; it means that responding officers cannot radio for assistance. Constructing additional towers is not realistic. Sites are not available, costs are prohibitive and in many circumstances the most technically proficient means is a high tower. NPSTC urges that throughout the Commission's consideration addressing migratory birds and communications towers that public safety communications' fundamental objective to dispatch the most effective resources to an emergency expeditiously resonate. Dispatching response to a large or small incident, the ability of a citizen to dial 911 and be located and the effectiveness of the Emergency Alert System and Amber Alerts, all encompass wireless communications that rely on communications towers. The height of those towers and where they are located is inextricably linked to covering an entire geographic area.

Law enforcement, fire, emergency medical services and other public safety agencies are obligated to provide universal communications coverage. Lowering tower height reduces coverage area. Whether rural, suburban or urban, mountainous or desert, there are frequently no alternative locations that will provide comparable coverage to a particular system. Even if there were, of the costs associated with deploying a wide area system, the construction of the tower is the largest. Costs make additional but lower height towers prohibitive. Requiring multiple towers will not result in reduced service, but no service at all to many. Restricting heights of public safety towers will impede emergency response.

The Commission also seeks comment on whether to prohibit the use of guy wires. It seeks positions on the effect guy wires pose to migratory birds. It inquires of engineering and economic factors relevant to guy wires and consequences that will result from prohibiting it as a communications infrastructure. The NPRM asks whether the Commission should allow towers only upon filing of an Environmental Assessment asserting that there will be no effect on migratory birds and the Commission's determination that no significant impact is present. It also suggests that guy wire towers may be possible upon certification that no reasonable alternative exists.

Guy wire infrastructure does provide a more cost effective alternative in many circumstances. Before prohibiting use, the Commission should understand the costs that would be placed on licensees. Additionally, guy wire use is not limited to circumstances seeking a more economic infrastructure alternative. In many environments guy wires are the only means to provide for a transmission/repeater facility. Guy wires are deployed based on the topography and soil conditions of a location that is the only reasonable site given the coverage requirement.

The Commission's suggestion that guy wires be conditioned on submission of an Environmental Assessment showing that there will be no significant impact on migratory birds assumes a level of clarity of what factors and standards would pass muster. There is not. Additionally, any process requiring licensee analysis and advocacy and Commission examination entails significant expense and delay. NPSTC urges the Commission to consider the significant negative results that will flow from prohibiting guy wires or imposing a lengthy approval process.

The same caution applies to the Commission's suggestion that it routinely require an Environment Assessment and determination for all towers exceeding 200 feet. The time, expense and delay will present insurmountable barriers to making improvements. The costs of a communications system should relate to the infrastructure and equipment, not legal and processing costs.

The NPRM also inquires whether there should be a mandate to collocate antenna and tower facilities absent a certification requirement that collocation opportunities are not available. NPSTC questions whether this is necessary. The investment required, the zoning approvals needed and community resistance impose enormous incentive to collocate facilities. Additionally, the Commission's rules should recognize that with regard to public safety, security and redundancy demands may require that facilities not be collocated with other users.

The NPRM's primary proposal is that any newly constructed or modified communication tower must, as the preferred system, use white strobe lights for nighttime conspicuity over red obstructions lighting systems. NPSTC's concern relates to any mandated retrofitting of existing towers and local resistance to white strobe lights. The cost of retrofitting, whether it involves the replacement of lights in the ordinary course or installation of an entirely new lighting system, is

information that should be among the factors the Commission weighs.

There should be no debate that requiring towers to be modified beyond normal replacement cycles will be an expense imposed on local and state governments and presents a mandate that diverts resources from other programs. Beyond these tangible costs is that whatever the Commission decides must have a consistency with the FAA's rules. It is incumbent that the parallel character of the Commission's and the FAA's current rules be preserved. It is not reasonable to establish rules addressing towers for purposes of protecting migratory birds, yet caveat these rules with the provision "...to the extent permitted by the FAA", as the NPRM seemingly states.<sup>2</sup> Additionally, and as noted, federal rules must comprehend the zoning and environmental interests of local and state governments and bring clarity and not confusion to how local governments can deploy communications facilities with some level of efficiency.

### **Summary**

The Commission faces a difficult challenge in bringing clarity to how communications towers effect migratory birds and what steps should be taken. NPSTC urges the Commission in

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<sup>2</sup> NPRM at paragraph 47.

pursuing that clarity to consider and balance the costs any rule changes will mean to local and state governments. The Commission should weigh the benefits of restricting or eliminating the use of guyed towers against the coverage mandates for mission critical public safety communications and topological challenges that are often presented when trying to build towers to meet those requirements. The Commission's consideration should also recognize that reducing tower heights is not a reasonable alternative when, as in public safety communications, wide area coverage is vital to emergency response.

Respectfully submitted,

*Vincent R. Stile*

Vincent R. Stile, Chair  
NATIONAL PUBLIC SAFETY  
TELECOMMUNICATIONS COUNCIL  
8191 Southpark Lane, Number 205  
Littleton, Colorado 80120-4641  
866-807-4755

April 23, 2007